Sagarin 94

Q Just because of lack of operating capital?
A Lack of operating capital due to the fact of this lawsuit and I'm actually very nervous, too. God forbid I lost this lawsuit, why, I would have to go out of business. I'd fold.
Q You also authorized your counsel to file a lawsuit against Designer Skin, as well, correct?
A Correct.
Q And that was in October of last year?
A If you say that.
Q October, November?
A If that's what you say, that's fine.
Q I don't want to --
A I'll take your word for it.
Q I'm not going to put words in your mouth. That's not my job. I've got a copy, actually, of the complaint. It says, November 1, '05. Does that sound about right? I'll show it to you.
A Yes.
Q Would it be fair to say that filing the

Sagarin 95

Designer Skin lawsuit has also caused additional financial burdens upon your company?
A Yes. I'm also aware that your clients are on a first-name basis with the CEO of Designer Skin and they talk on a regular basis, based on my lawsuit, yes.
Q Well, that's news to me. They do know his name, but they certainly --
A I have e-mails documenting that, that they talk, from Mr. Grossman, telling me that he has the ability to call Australian Gold and tell them to cool the jets, quote, unquote.
MR. MATTHEWS: Let's go off the record.
(A discussion was held off the record.)
Q Any other economic harm that you contend that S&L Vitamins has sustained as a result of Australian Gold's conduct?
A No, not that I can think of now.
Q If you look at the first exhibit, look back at Exhibit 18. I want you to look at the letter that's attached to the back of the complaint, right after Mr. Coleman's signature. It's from Ice Miller. Actually, it's from me to Body Source.

Sagarin 96

Is this the letter that you were referring to earlier in your deposition that you received shortly after you began selling the tanning lotions on the Internet?
A It appears to be a letter from Ice Miller. I don't know if it is the exact letter that I received, but it appears to be a letter from Ice Miller that tells me to stop selling tanning lotion.
Q Did you share that January 15, 2004 letter with Mr. Mercadante?
A I think he shared it with me.
Q Did you and Mr. Mercadante jointly decide how to respond to this letter or address this situation?
A He more or less put it, you know, we made the decision together, yes. But ultimately, I make the decision.
Q Why is that, why did you ultimately make the decision? Do you have a better feel for business?
A Possibly.
Q Or things like --
A More experience.

Sagarin 97

Q The very last letter is a February 22, 2005 letter from Australian Gold, again, addressed to Body Source. Did you receive a copy of this letter?
A I'm assuming so, yes.
Q Did you call Australian Gold in response to the letter or have any further communications with Australian Gold?
A I was in California when this letter came in. I don't remember specifically.
Q You were involved in the California lawsuit?
A Yes.
Q Was that your deposition?
A Yes.
Q What did S&L Vitamins do in response to receiving this letter?
A It looks like we faxed it somewhere, I would hope to Mr. Coleman's office.
Q It says on the last paragraph, if you'd like to resolve this matter, you may contact me directly to discuss an amicable resolution.
Did you contact Leslie Hartley after you received this letter?

Sagarin 98

A No. But I believe that she contacted us.
Q When was that?
A It was a phone call. I don't know specifics. After this letter was sent, almost immediately.
Q Did you talk with her?
A No.
Q Did anyone at S&L Vitamins talk with her?
A She talked to Michael Nierman and Trevor Gray, yelled at Michael Nierman and screamed actually, on the phone.
Q So let me understand this. Trevor Gray, Leslie Hartley and Michael Nierman were on the phone?
A Michael Nierman picked up the phone. Leslie began to speak. And then I believe, it sounded like, from the way Michael Nierman described it to me, that Trevor removed the phone from Leslie's hand and took over the conversation quite heatedly.
Q Was anybody else besides Mr. Nierman on that phone conversation on your end?

Sagarin 99

A No.
Q What did Mr. Nierman tell you was said during that conversation?
A I don't remember other than the fact that he told me basically that it was just heated and that it didn't last long because he wouldn't tolerate being yelled at.
Q And was no one else at the store at the time the phone call was made?
A I wasn't there.
Q Was Mr. Mercadante there?
A I don't know. I wasn't there.
Q Do you know if Mr. Nierman told Trevor Gray that he might not be the person that --
A Yes, he did. I believe that was part of what he said, now that you refreshed my memory, yes. Yes.
Q Did you call Mr. Gray or Ms. Hartley back?
A I called Mr. Gray back a few months later.
Q Was that before or after the lawsuit?
A I think it's after.
Q You initiated that call to Mr. Gray?

Sagarin 100

A Yes.
Q What was said in that call?
A How can we end this amicably? He said, stop selling Australian Gold. I said, no. And that was it. And literally, that was it.
Q Did he yell at you in that call?
A No.
Q Did you yell at him?
A Not at all, no.
Q So it was just a difference of business philosophies, you agreed to disagree, I guess?
A That's why we're here.
Q Do you know what S&L Vitamins's sales were for 2005?
A Look at the last report that you gave me, I think it's 1-1/2.
Q Well, that report was ended September 30, 2005. So I don't know what period that's from.
A So then I don't know.
Q Your 2004 tax return, Exhibit 5, showed gross sales in excess of $1.4 million; do you know if your business has grown since then?
A I think it's gone down a little bit; I

Sagarin 101

think.
Q How much, do you have any idea?
A No, I don't. More competition, Ice Miller's got to get those letters out quicker.
Q That's one thing we'll try to help you on.
A I appreciate that. Part of the reason I I'm in this is because I know how efficient you guys are.
MR. MATTHEWS: Off the record.
(A discussion was held off the record.)
Q I'm going to hand you deposition Exhibit 8. This was another document that we attached to our complaint. And this was, at least a portion of your website on April 25, 2005.
I want to draw your attention to the right-hand corner where it says, sponsor results. And under it, it says, buy discount tanning lotions here, Australian Gold, Swedish Beauty, et cetera.
A Yes.
Q Is that your website there?
A It appears to be, yes.
Q What did S&L Vitamins do to be a

Sagarin 102

sponsored result?
A We had to pay for that placement.
Q How do you go about doing that?
A We set up an account with -- if this is a Yahoo listing, we would set up an account with OVERTURE.COM.
Q What words did you pay for placement?
A In this particular one, it appears to be Australian Gold.
Q Let me show you what's been marked as Exhibit 9. Did also pay for placement for Swedish Beauty?
A Yes, probably. They pick up on it. I don't know exactly how Overture works, but I would assume that I did.
Q My understanding of overture is that you have to tell it what words you want it to bid on; is that your understanding?
A You're accurate in saying that, but sometimes it picks up on stuff that is -- even if it's in the word. I mean, if someone typed in tan, T-A-N, my ad might come up.
Now, that's usually how it works, so that sometimes -- but I probably paid for Swedish

Sagarin 103

Beauty here, yes.
Q My understanding is also that on the pay for placement, you can guarantee yourself a spot in the top of that. In other words --
A I agree.
Q -- the sponsor results you want to be in the top three, you can do that if you're willing to pay enough money; do you agree with that?
A Yes. If you're willing to pay enough money.
Q Other than Australian Gold, Swedish Beauty, did you use any other brand names in Yahoo to pay for placement at any time?
A Yes.
Q What were they?
A Many. Too many to --
Q Let's use lotions.
Lotions, I think I probably used California Tan. I used Designer Skin. I used Supre. I used tanning lotion as a term. I used tanning bed lotion as a term, indoor tanning lotion as a term.
Q Is the point to use all those names to make sure that if a consumer is typing anything

Sagarin 104

tanning-related, your website is going to pop up there at the top of the list or near it almost every time?
A It is an attempt to, to solicit business from the customers as an advertisement.
Q Are you continuing to use pay for placement advertising on the Internet?
A As little as possible.
Q Is that because of the cost?
A Absolutely, yes.
Q What is the cost for pay for placement advertising range?
A A nickel to $5 per click.
Q So if there are enough bidders for, let's say, Australian Gold, you have to outbid your competition on a per click basis and you may pay, not say in this case, but you may pay up to $5 per click for a certain phrase; is that correct?
A That's correct, yes.
Q What did S&L Vitamins, what does it typically spend on pay for placement advertising?
A This time of year, again because it is the supplement season and it is the tanning

Sagarin 105

season, it tends to be more people are on looking for those type of products. I think I submitted you guys a statement we spent $50,000 in 1 year, $48,000.
Q Per year?
A Per year.
Q Is that other than rent, is that your biggest expense?
A Yes. It's a horrible expense, but, yes.
Q Is it a necessary evil to make sure you survive on the Internet?
A In the beginning it was. We're trying to get away from it because we have a customer base.
Q Today as we sit here, are you continuing to use pay for placement in your business?
A Yes.
Q Are you still bidding on the word Australian Gold?
A I believe so, yes.
Q Are you still paying for placement for the words Swedish Beauty?
A I believe so, yes. I do sell those products.

Sagarin 106

Q I know. Are you still using California Tan?
A No.
Q Is that still through Overture or has that changed? Are you with a different company now, do you know, or does that all go through Yahoo?
A Overture is a Yahoo company and vice versa. We do use Google Add Words also.
Q Is Google Add Words a similarly placed --
A Nearly identical.
Q Just so I'm clear, the Google Add Words is a different service than the overture services provided by Yahoo?
A It's a different company. Same service, different company.
Q Do you know what search engines Google applies for?
A No.
Q I know overture at one point applied to a variety of search engines?
A I believe Google does also.
Q You have to have both to make sure

Sagarin 107

you're covered?
A Do I have to, no.
Q I know you don't have to do anything, but if you want to make sure you're covering the Internet with respect to the content and what you're selling on your website, is it a good business decision to use both Google and Overture?
A I believe it is a good business decision to use Google and Overture, yes.
Q Are you paying per click on Australian Gold on Google?
A Yes, I think so.
Q I haven't asked you about Caribbean Gold. Are you paying for that word?
A No.
Q Why not, not as popular?
A It's not as popular. It just doesn't sell. It's not worth it. I can tell -- it doesn't generate clicks.
Q Do you keep track of what percentage of visits to your website are through a pay for placement lead?
A No.

Sagarin 108

Q Are there tools that will tell you how much traffic you're getting on your website because of your pay for placement advertising?
A I do believe that Google and/or Overture do keep track of those for me.
Q Have you seen statistics showing what percentage of your Internet traffic is generated from the pay per click?
A Yes.
Q What were those statistics?
A I don't know.
Q Do you have a ballpark?
A Percentagewise?
Q Yes.
A 10 percent, not a lot.
Q How recent was that?
A I check it once a week. I compare it against the traffic that my website tells me that I had. I try to figure if it's beneficial to continue to do that, that's how I figure it out.
Q Right. As I said, that's a pretty important statistic, I would say; if you want to continue with expensive advertising, you probably need to know if it's effective.

Sagarin 109

So is most of your -- is there something called spidering on the Internet?
A I think so, yes, absolutely. I think spidering is what the website -- excuse me, what the search engine picks up on.
Q It looks at content of the website?
A Correct.
Q What has S&L Vitamins done as far as the content of its website to increase its exposure on the Internet?
A We've recently employed a firm by the name of RFI Media to help us with that. It seems that we didn't have any content up until 2005 or the end of 2005. And he helped us add content to the site.
Content, in my understanding, is just explaining the products that you're selling. Search engines like websites with content, not strictly sales.
They like to be informative to the consumer, as well as sales-oriented, but not just sales-oriented. So they'll give preferential treatment. It's a formula that I do not understand, but I think that's how it works.

Q So your understanding is if you just show the product up there, that's not as good as showing the product and giving some information to the consumer along with the product?
A That's my understanding.
Q And RFI has been engaged to better identify search results; is that the ultimate goal?
A That sounds correct.
Q Is RFI doing anything else for S&L Vitamins?
A No.
Q Have all the changes been made to the website that RFI has requested or proposed?
A RFI is on retainer monthly. So changes are ongoing.
Q With respect to tanning lotions, what substantive changes were made to your website?
A I don't know. He does know we're in litigation and I told him specifically to not do anything to jeopardize any legal issues, please do not play any games with the tanning lotion end of it, please.
Q Here is Exhibit 11. This is another

portion of your Body Source website or actually, this is from the THESUPPLENET.COM and for the record, it's Exhibit 11. If you look at page 4 of 5 --
A Okay.
Q There's a paragraph there below the products that secretary be a smart tanner, the other one says, different lotions for different tans. Was this content added at the suggestion of RFI?
A Yes.
Q What was the primary purpose of adding the content?
A He thought that by adding content in an information-type of manner, would give us better positions on the search engines.
Q The information in here, who provided that to RFI?
A I sent RFI a stack of trade magazines and I told him to be original in his content. Do not take anybody's content and write original sentences for which you're putting in my thing. That's exactly what I told him.
Q Did you tell him what to put in?

A No.
Q So that was something just selected by RFI?
A I had to approve it.
Q Right. But they write it up, send it to you?
A Yes.
Q And you tell them, yes, this is good or make revisions?
A Yes.
Q Did you change anything that RFI sent to you with respect to this information on Exhibit 11?
A I don't read it on a daily basis. He does have access to the website. Possibly he could have changed a word or two. I don't know.
Q But I guess my question was, do you remember anything that they sent to you and you said, no, this is unacceptable, change this language, remove it?
A No.
Q Did you enter into a contract with Google for their pay per click services?
A Possibly. I don't -- agree to the

terms, check here.
Q So it would have been online?
A Correct. They don't agree to the terms, they don't do business.
Q Do you know if you have any documents regarding your pay for placement advertising to Google?
A I think I submitted them to you, either the records or amounts and things like that.
Q I saw some things on amounts. I didn't know there were any contracts or agreements.
A No. I don't know if there are any. I'd be more than happy to get them if there are any.
Q We've handed you Exhibit 10 and this is another printout from your website. I'll ask another question about 10.
I was going to ask you about these photographs, but I'll get a better copy. Let me ask you a question about your pricing again, go back on that.
I believe Mr. Mercadante told me that you get about 45 percent off the salon costs from your --
A My vendors do. My vendors get 45, 40,

Sagarin 114

35 some people. And I give them -- I multiply it times 1.2 and that's what I pay.
Q Generally speaking, look at the Crystal, it's easy because it's $100 retail. What is the salon cost for $100 bottle of Crystal, do you know that?
A $50.
Q And how do you know that?
A It's usually 50 percent, half.
Q So it's just known in the industry or is that something you were told by someone?
A Every catalog I've ever seen, that's what it's been.
Q Is that true across the board for all tanning lotion manufacturers or is that just unique to Australian Gold, Swedish Beauty?
A No, that's unique to Australian Gold and Swedish Beauty. I don't do business with every tanning manufacturer, so I don't know.
Q Your distributor gets 45 percent off salon costs or up to 45 percent off salon costs?
A 45 is the most I've ever seen.
Q Whatever he pays for it, you multiply that by usually 1.2?

Sagarin 115

A 1.2 unless somebody is prepaying up.
Q And then that's 1.1?
A Right.
Q Is that formula used in the same manner with all Australian Gold products, that calculation and scenario we just did for Crystal, is that true with respect to all Australian Gold products?
A I don't understand, the 1.2 thing?
Q Yes. Just kind of the way the salon costs works, the discount that the distributors get and your markup?
A It seems to.
Q You're showing Golden Bronze Glaze packets. That's actually one of the products shown here on the same page. How do you order your packets?
A The same way I order everything else.
Q Can you order those separately?
A I don't understand separately. I mean --
Q Do distributors offer packets for sale?
MR. COLEMAN: Object to the form.
A My vendors I purchase from sell packets.

Sagarin 116

Q Did you ever get a product where there's a sample packet attached to a bottle of lotion?
A Yes.
Q What do you do with the packet if that's attached to the bottle of the lotion?
A Keep it attached, send it to the customer.
Q If you look at page 2 of search on Exhibit 10, on the right hand, there's your logo, it says the Body Source. And the right hand of that logo next to the man and woman pictured there, there's an upside-down triangle with the word Body Source and another little design there. Who designed that logo?
A I don't know. About 12 years ago, a person named Mike.
Q Was it designed for Helen Sagarin's Body Source?
A Yes.
Q Does she also use that logo at her Body Source store?
A Yes.
Q Did the other Body Source stores that were in existence over time, also use the same

Sagarin 117

logo?
A Yes.
Q You have Exhibit 13 in front of you. This is a portion of your website showing the sale of Australian Gold Body Kisses.
Really, I think the only question I have on this is the last page, which is the blowup of the product, the large-sized image. Who took this picture?
A Either Helen Sagarin or Elizabeth Sagarin.
Q Who put the BODYSOURCEONLINE.COM banner across the top and then the upside down triangle logo on top of this photograph?
A Either Elizabeth Sagarin or Helen Sagarin.
Q If you compare that with, I think it was Exhibit 6, originally, you did not have the Body Source logo or that banner on there?
A Correct.
Q What prompted you to put Body Source on these images of the products?
A Picture theft.
Q Was S&L Vitamins a victim of picture

theft?
A Yes. I believe to be. I couldn't prove it, but I believe --
Q What led you to believe that?
A Other websites with our pictures on it selling Australian Gold.
Q What websites do you remember?
A I believe it was WORLDCLASSNUTRITION.COM. The person copied my entire website, not just Australian Gold.
Q Who is that person?
A I have no clue.
Q Have you ever spoken with anybody at WORLDCLASSNUTRITION.COM?
A Never.
Q What does it mean when it says all rights reserved at the bottom of the photograph?
A Please don't steal my photograph.
Q Why aren't you an officer of S&L Vitamins?
A No reason. There's no reason to be.
Q Is there no reason not to be? You know a lot about the business. I mean, you know much if not more than Mr. Mercadante, so why aren't

you vice president or one of those titles?
A Titles don't impress me. The relationship works fine just the way it is.
Q You produced some images to me, I don't have them all here on the disk of your products. Are they given to you in a disk format by Helen Sagarin or Elizabeth Sagarin and then you take them and download them on your computer?
A No.
Q How are they sent to you by --
A E-mail.
Q What kind of file are they?
A I don't know.
Q Just something that opens up as a picture?
A It just pops up on the bottom.
Q How do you take it from receiving it in the e-mail from Helen or Elizabeth Sagarin and get that onto your website?
A Put it into the Yahoo store editor. It gets saved in, I believe it gets saved into my pictures. And then gets placed on the Yahoo store website and that's it.
Q Have you deleted any pictures from your

hard drive that you've received?
A Not that I know of.
Q At any time?
A Not that I know of.
Q Do you know where the photographs are, the images that were displayed on your website in 2004 as evidenced by Exhibit 6? It was the photographs that were on the website.
A I understand. No, I don't know where they are. If I had them, I would give them to you.
Q Do you know if Helen Sagarin or Elizabeth Sagarin have saved a copy of any of the photographs that I have taken for you?
A I asked them when the discovery issue came up when you requested the photographs in discovery and we produced all the photographs that they could produce to me, which was the disk.
Q Have you looked on your computer, your hard drive --
A Yes.
Q -- to see if they're still there?
A I think Steven did and I don't know what

happened.
Q They're not on the computer?
A If Steven looked for them and said they weren't on the computer, then they're not on the computer. Steven would look for them.
Q You didn't personally?
A No, I did not.
Q So I can assume then that everything you gave me in discovery or your attorney gave me in discovery is the only thing that exists with respect to photographs?
A That's correct.
Q Have you ever been to any training offered by any manufacturer or association related to the indoor tanning industry?
A No.
Q I'm going to hand you Exhibit 12. Again, this is a portion of the THESUPPLENET.COM website. I want to draw your attention on page 2 of 2 to the tanning lotion disclaimer next to the American flag. First of all, what does the American flag represent?
A It looks nice.
Q Anything else?

Sagarin 122

A No.
Q Oh, come on. Did you decide to put the American flag next to the tanning lotion disclaimer?
MR. COLEMAN: It stands for justice, damn it.
MR. MATTHEWS: Thank you.
A Yes.
Q Seriously though, who authored this disclaimer?
A I did. And my representation did, counsel.
Q Did you look at any other websites to see what disclaimers other websites might have had?
A That sold tanning lotion?
Q Yes.
A Yes.
Q What websites did you look at?
A I don't remember. They seem to all have it on there, though.
Q They seem to have all similar language. Did you copy any language out of this?
A Like I said, I wrote it addressed to my

Sagarin 123

counsel.
Q It says, the product names used in this website are for identification purposes only. What does that mean?
A To identify the product that was being sold.
Q Now, the Australian Gold name and Swedish Beauty name for your pay per click services is used to generate traffic to your website, correct?
A And also to identify the products that we sell on the website.
Q Why did you put in there Body Source is not approved or authorized by any manufacturer or distributor to sell any of the tanning products displayed on this website?
A It bunches them. It puts them in a big bunch. It covers the whole gamut.
Q But that statement is not true, is it?
A Some manufacturers do authorize me to sell on the Internet, correct.
Q So this statement would be false?
A Not completely.
Q But in part it would be false?

Sagarin 124

A In part, it would be false. The manufacturers that allow me to sell the products on the website do not mind that it's there.
Q Have you talked to the manufacturers who let you sell the product about this tanning lotion disclaimer?
A I don't believe so, but I might have. They are familiar with my website. And if they are familiar with my website, they will know I posted it on every page and therefore probably received it and not objected to it.
Q I guess first sentence when it says, that's not associated with or affiliated with nor do we represent any manufacturer, distributor or tanning products on our website, that would be false in part to the extent that you do, I guess, have an affiliation with these manufacturers in the sense that you buy directly with them; would you agree with that?
MR. COLEMAN: I'll object to the form.
A Am I going to answer? I'm sorry.
Q Let me rephrase the question. Is that first full sentence there correct?
A Body Source is an independent

Sagarin 125

distributor.
Q There's a period. The second sentence, sorry, BODYSOURCEONLINE.COM is not associated with, affiliated with, nor do we represent any manufacturer or any distributor of any tanning products displayed on its websites?
A How would I say that it's true? Because the fact of the matter is, that it is true. And I believe that the manufacturers that we do business with directly, out of sight, out of mind-type of policy.
Don't like their products to be sold on the Internet, but don't really care. So disconnect affiliation with anybody.
Q Are these other manufacturers, is their goal to try to sell just as much product as they can to get market share?
A Usually that's what people like.
Q They turn a blind eye to what you're doing with it, as long as you're selling them a lot?
A I don't know why you would turn a blind eye to what I'm doing because I'm not doing anything wrong, but that's just my opinion.

Sagarin 126

Q Is there any Australian Gold product that S&L Vitamins does not carry?
A I don't know. I believe I carry the whole line. If not, you could tell me and I'll carry it.
Q Is there any Swedish Beauty product that S&L Vitamins does not carry to its knowledge?
A To its knowledge, no.
Q With respect to Caribbean Gold, you carry the complete line of Caribbean Gold?
A What's available to me through my vendors, yes.
Q I put Exhibit 16 and 17 in front of you. And this is a printout from a portion of Overture's website. And were searching for the word or the term on Exhibit 16, Swedish Beauty.
Have you seen this portion of the Overture website before or something similar to that?
A Yes.
Q Just so we're clear on how this works, you type in Swedish Beauty and number 4, the THESUPPLENET.COM is listed as number 4. Do you see that?

Sagarin 127

A Yes.
Q What does that mean, are you the fourth site shown? Are you going to be the fourth?
A I believe so, yes.
Q It says advertiser's max bid is 30 cents, is that how much you're paying per click for Swedish Beauty, at least as of the date of this exhibit?
A Yes.
Q So if I type in Swedish Beauty and the THESUPPLENET.COM comes up fourth on my search list and I click on that link, me as an Internet user has just cost S&L Vitamins 30 cents?
A Yes.
Q Let's look at Exhibit 17. You're paying a little bit more for Australian Gold. Has that always been true, that you pay more per click for Australian Gold?
A No. Compared to Designer Skin, is that your question?
Q Well, than Swedish Beauty, was my question?
A Excuse me, than Swedish Beauty. It changes from day-to-day, minute-to-minute. So it

Sagarin 128

could -- if MSN shopping would drop out, who uses Australian Gold as a search term, if Best Price Tanning would drop out, I can move up, you know.
Everything changes. It's all variables, there's a lot of variables in here.
Q Of course you're competing for Australian Gold with, you said, Best Price Tanning, that's one of your competitors?
A Yes.
Q So if you want to get listed ahead of them, you got to bid at least --
A 47 cents. Actually, you would have to round it down. So I would have to pay 50 cents and then they would round it down to 47 cents. Actually, the closest time, excuse me.
Q Does Google work essentially the same way?
A Yes. Much more efficiently, though.
Q Do you know what a Medatag is?
A No.
Q Have you had any discussions with Desktop Solutions or RFI about putting certain words in the HTML code of the computer?
A Again, when we hired RFI Media, they

Sagarin 129

were fully aware of our litigation situation and they were told not to do anything. I did mention to RFI about no medatags for Australian Gold, Swedish Beauty.
I don't know what a medatag is, though, but I know it's a legal issue. What Yahoo does, I don't know. Yahoo might do their own thing.
Q When you designed your website or had it first designed, did you ask anyone to put in any key words related to tanning lotions --
A No.
Q -- in your source code?
A No.
Q Let me just show you this.
MR. MATTHEWS: Could you mark this.
(Sagarin Exhibit 1, document, marked for identification, as of this date.)
Q I've handed you what's been marked as Sagarin Exhibit 1. Do you have any idea what any of this means on this page?
A No, I do not.
Q I will just represent to you for purposes of this question and you and your counsel can dispute it, but if you look at the

Sagarin 130

first part of this, and my contention is, this represents a portion of your HTML source code as of April 19, 2004, 10:37 a.m.
And under the key words, there are the phrases, Australian Gold tanning, tanning lotions, indoor tanning lotions, Australian Gold tanning lotions.
A I see it.
Q Do you have any idea where that content came from?
A No.
Q Do you know what a key word is?
A On Overture, yes. On Overture.
Q What is a key word on Overture?
A A key word is something that someone types in what they're looking for.
Q Do you know if --
A I mean, Yahoo could have generated this. Yahoo does a lot of things on their own to give preferential treatment to their Yahoo store customers. Yahoo could have done this on their own. I don't know.
Q Do you know if the words Australian Gold or Swedish Beauty are currently used in any HTML

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source code today for any of S&L Vitamins's websites?
A No, I don't.
MR. COLEMAN: Mr. Matthews, was your representation about this printout, was that it was the source code for what page again?
MR. MATTHEWS: For S&L Vitamins's website.
MR. COLEMAN: The entire website?
MR. MATTHEWS: Not the entire website.
Q Does S&L Vitamins do business outside of the United States?
A Yes.
Q What other countries do you do business in besides the United States?
A Speaking of Australian Gold tanning lotions or speaking in general?
Q I'm speaking about Australian Gold, Swedish Beauty tanning lotions?
A United Kingdom, used to. Not anymore.
Q Anywhere else?
A No.
Q What business did you do in the United Kingdom with respect to Australian Gold tanning

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lotions?
A Sold a person their products.
Q Who was that person?
A Michael Devlin.
Q Was that for Mr. Devlin's business?
A I believe so.
Q Were you aware of Mr. Devlin's website?
A Currently, he runs a website, yes. I'm aware of it now.
Q That's SUNESSENTIALSUK.COM?
A Not anymore, no it isn't.
Q What's his new website?
A BODYSOURCEONLINE.COM.UK.
Q Is there any formal or informal relationship between your Body Source and the company that Mr. Devlin is running in the United Kingdom?
A There is no agreement at all, just that he's a customer.
Q Did you and Mr. Devlin have discussions about him using your name in the United Kingdom?
A He mentioned it. I said I didn't mind. Have fun.
Q Are you receiving any royalties or is

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there a licensing agreement for him to use your name?
A No.
Q Do you receive any revenues from his sale of products on the Internet?
A Do I receive any revenues?
Q Yes.
A Ultimately, yes, because he reorders them from me.
Q S&L Vitamins is his supplier?
A One of them.
Q But is there any profit-sharing like money coming back to you from sales he's made on his Internet?
A No.
Q What products do you supply him currently?
A Protein powder, supplements, creatine, fat burners. I do sell him self-tanning lotion, not Australian Gold, not Swedish Beauty.
Q Why don't you sell him Australian Gold or Swedish Beauty?
A I think the lawyers over there got to him.

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Q Has he told you that he's not going to sell Australian Gold, Swedish Beauty on his website?
A I think he entered into an agreement that he wouldn't and I don't think he will. I won't sell to him anymore anyway because I don't want to violate any agreements. I won't sell him those products anymore.
Q I handed you what was marked as Mercadante Exhibit 19. Take a moment to look through it and then I want to go through these pages here.
A Okay.
Q What is the first page of this document?
A I don't know.
Q Is that something that S&L Vitamins prepared?
A No.
Q Is Body Source United Kingdom, Limited Mr. Devlin's company?
A I believe so.
Q Look at the second page. Have you seen that document before?
A No.

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Q Turning to the third page, have you seen this page before?
A It looks like, from what's on the top, it looks like an invoice.
Q What is Source Pharmaceuticals?
A A company that we manufacture a sexual enhancement product and a fat burner product.
Q Is it a separate legal entity or is it under the S&L Vitamins?
A It's a d/b/a under S&L Vitamins.
Q Are there any other d/b/a's of S&L Vitamins's besides the Body Source and Source Pharmaceuticals?
A Drills and Taps, I believe is a d/b/a. I'm not familiar with any others. THESUPPLENET.COM used to be.
Q You still have the THESUPPLENET.COM website up and running, right?
A No. It's just a forwarded link to Body Source. The URL does still work.
Q That's what I meant?
A Yes.
Q So if I typed in THESUPPLENET.COM, I'll eventually get to Body Source, but I don't get a

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message saying the post doesn't exist or no page exists?
A Correct.
Q This invoice here, and I'll represent it looks like the pages are slipped on this exhibit, the following page may actually be the first page; does that look right?
A Yes.
Q Are you selling to Mr. Devlin at a discount than what you sell on the Internet?
A Yes.
Q What percentage of discount are you giving Mr. Devlin?
A 50 off retail or 55. He constantly negotiates. So, I mean, it varies from time on time.
Q So we take your retail price that's shown on your website and knock 55 percent off of it?
A Sometimes 60.
Q How did you get introduced to Mr. Devlin in the first instance?
A He contacted us.
Q He contacted you through the website?

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A E-mail and then phone.
Q What is Autographs & More?
A We bought a fax machine from the next-door neighbor that went out of business. That's the clue that gets you guys the win right there. I purchased a fax machine for $50 that was going out of business.
Q How many transactions were there between S&L Vitamins and Mr. Devlin?
A In relation to the products?
Q Yes.
A Five, six, eight, seven.
Q What was the volume of sales?
A They're around $7,000. I mean, he had a freight requirement. I gave him a deal on the freight for $7,500, so I think he went for that every time, so I would estimate each one was around 7 grand.
Q I only have an invoice for one transaction in May of '05. Did he order both Australian Gold and Swedish Beauty products?
A Very little Swedish Beauty, mostly Australian Gold.
Q This invoice I have here is dated May 1,

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'05, what was the date of your first transaction with Mr. Devlin?
A End of '04, beginning of '05.
Q I assume at the time you first did business with Mr. Devlin, he was not doing business as Body Source United Kingdom?
A No. It was Michael Devlin.
Q I'm sorry?
A It was Michael Devlin.
Q So that discussion with him where he asked to use the Body Source name occurred sometime from that first conversation between then and May of 2005? I'm trying to figure out when he started using the name Body Source United Kingdom.
A I don't know when he started using this name. I've never seen this invoice before, so I don't know when he started using it. I don't think we had a discussion until long after this invoice was produced to be perfectly honest with you.
Q Look at the invoice on page 3 of 4. That's Source Pharmaceuticals's invoice?
A Okay. Yes, Steven handles the invoices,

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so I guess he must have talked to Steven about it.
Q Are similar invoices sent to all your Internet customers?
A No.
Q Do they receive any invoice from you?
A Yes.
Q What does the invoice say at the top of the page?
A On the very top?
Q Well, let me just ask you this, how is the invoice different from the one that's shown here in Exhibit 19?
A It's completely different, completely different. It looks like that.
Q It looks like the first page of Exhibit 19?
A Similar.
Q What's the name of the company listed on the invoice?
A Body Source and it has a Yahoo order number and then it goes, instead of here would be the customer that's receiving the bill to address, the ship to address, the products the

Sagarin 140

customer ordered, amounts, total.
Q My understanding in the order process, you actually receive some kind of order through your Yahoo software system, I guess, that operates your website?
A I don't understand.
Q How do you receive orders?
A How do I know there's an order in the system?
Q Yes.
A E-mail.
Q So you get an individual e-mail for each order?
A Yes.
Q How many orders a day do you get?
A Depending the time of the year, 50 to 150.
Q Each one representing an order?
A I hope so.
Q Once you received the e-mail and you open it, what do you do to process the order?
A Charge the customer.
Q How do you charge the customer?
A It's a gateway program on the Yahoo

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store, just click, press charge. Print the item, the invoice. Pull the order, pack the order, ship the order, print the shipping receipt.
Q And UPS comes and picks the products up and takes them away?
A Every day.
Q How many hours a day do you guys spend packing orders?
A Orders are being packed all day. Whether or not they're packed all at the same time, usually there's about a decent amount of orders when you walk in in the morning.
The morning is done from about 11 to 2, 11 to 1, possibly. And then possibly have lunch and then some orders can come in and then we'll pack the afternoon orders. I don't know how many hours, three maybe, four.
Q What's turnaround time on processing the order?
A One order?
Q Yes.
A It would take me as little as 30 seconds.
Q For all of the day's order, if I place

Sagarin 142

an order today, how soon will you have that processed?
A Usually today. Usually the same day.
MR. COLEMAN: Can we take five?
MR. MATTHEWS: Yes.
(A recess was taken.)
Q I just want to show you Exhibit 20, which was the Yahoo small business merchant solution report that you printed up for Australian Gold.
We are going to do this by letter today to your counsel, but I believe that this report would also or could also show Swedish Beauty and Caribbean Gold sales?
A It should have been supplemented with that. It should have been and I'll follow up with that then.
Q Okay. We'll get a letter to your counsel.
A I know that Steven mentioned that we needed to supplement you with that. I will do that.
Q Other than this Exhibit 20, is there any other document that S&L Vitamins keeps to track

Sagarin 143

its sales of tanning lotions?
A No.
Q The Internet makes it pretty easy, does it, to track stuff?
A It's beautiful. It's got it all right there.
Q Are you receiving free supplements from S&L Vitamins today as part of your compensation?
A If I choose to eat a candy bar off the shelf, a protein drink or a protein drink out of the cooler, I take it. If my wife wants a protein shake, I take it home for her.
Q You're putting in an awful lot of effort into this business and I just want to make sure I understand any other perks or benefits that you might get.
Other than taking candy bar off the shelf, is there any significant --
A I have a small expense account that I buy lunch, and bought lunch today, paid for gas, occasional out to dinner. I have a car. It's a nice car. And that's it.
I hope to build the business some day. We've been unable to take money for years, ever.

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I hope to build the business someday and this is tough.
Q Have you read Steve Mercadante's deposition?
A I've seen it. I didn't read it. It showed up the other day. I didn't read it.
Q Have you individually put any money into S&L Vitamins?
A No.
Q Has Laura Fanning made any additional capital contributions into S&L Vitamins?
A No, not that I'm aware of.
Q Would you be aware of such a thing, if that happened?
A I should be. I hope I would be.
Q You mentioned earlier in your deposition, some e-mails you had back and forth between Brad Grossman of Designer Skin and he somehow attributed some statements or made some statements about what Australian Gold would or would not do with respect to you.
Can you tell me the circumstances under which you began communicating with Brad Grossman?
A The circumstances?

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Q Yes, why were you talking to him?
A The lawsuit.
Q Was it before your lawsuit with Designer Skin had been filed or after?
A After.
Q Did he call you or you called him?
A He called me.
Q What did he want?
A To see how we can reconcile this and similar to the conversation that I had with Trevor Gray, no, no. Good-bye. And there was another contact. He actually offered me money to take it down. And I told him, no.
Q How much did he offer you?
A 5 grand. And I told him, I had a lot of inventory and I wasn't willing to let it go for 5 grand. He wanted to buy back the inventory.
Q Did you have followup communications after that initial call?
A Yes.
Q What were those?
A E-mail.
Q What were the substance of those e-mails?

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A I politely rejected his offer of $5,000. I referenced the fact that I was in litigation with Australian Gold and ETS and that if I settle with you, you guys would attack me like, forget it. So settlement is not an option here.

And then his statement back to me was let me see if I can contact Leslie Hartley or, I think he used Leslie as a name in e-mail, if my memory serves me correct, if I can get them to cool their jets so to speak. And I just didn't even reply to that e-mail.

Q He didn't promise you that he and Leslie had any understanding or agreement?

A He didn't promise me anything. He insinuated that there was a relationship there that he might have some kind of control over Leslie. I don't know.

Q Have any of your suppliers ever shown you a do not sell list?

A No.

Q Are you aware of a list that Australian Gold has referred to as the do not sell list?

A Yes.

Q How so?

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A TANTALK.COM.

Q What is TANTALK.COM?

A It's a message board for people who tan.

Q Is it an industry-related board focused on tanning salons or the end users?

A Both.

Q What was said about the Australian Gold do not sell list on TANTALK.COM?

A Nothing that I'm aware of. It was posted on there and that's how I obtained it.

Q Was your name on there?

A Yes.

Q Do you know the date of the do not sell list?

A No, I do not.

Q Do you know what name appeared on there, was it S&L Vitamins or was it --

A Body Source, my mother's name was on there surprisingly. I don't know why and actually the Miller Place store was on there. I don't know why.

Q Helen Sagarin individually was on there?

A Helen -- I think so. I believe so, yes.

Q Have you ever received a disk that

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contained images of Australian Gold, Swedish Beauty products?

A No.

Q Does Body Source have any intention to put a tanning bed inside of its retail location?

A No.

Q You would agree with me that Body Source is not a tanning salon?

A I would agree with you, yes.

Q We served some interrogatories on you that you provided a response under oath. I just have a few followup questions. Mr. Stein sent Mr. Earley a letter providing some supplemental responses at the request from us.

And one of the questions dealt with monetary damages that you have sustained. And one statement Mr. Stein made is plaintiff's business has been crippled with this litigation with its suppliers refusing do business with plaintiff as a result of Australian Gold's harassment of those suppliers.

Two questions. First, what suppliers, if any, have refused to do business with S&L Vitamins?

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A No supplier.

Q What facts do you have that would suggest that Australian Gold has harassed any of your suppliers?

A Harassed, define harassed.

Q It's Mr. Stein's words, so I don't even want to attempt to define it for him, but I just didn't know if you had any idea what that sentence meant.

A It's inventory time. It's people, when they receive subpoenas. It intimidates people when they have to give depositions. I would define that as harassment.

Q I'm going to put before you Exhibit 24, which is Australian Gold's standard distributorship agreement with its distributors.

Have you seen this document or a document that may be substantially the same as this only with maybe a name inserted in the blanks?

A I don't think so.

Q Did you read the counterclaim that Australian Gold filed against S&L Vitamins in this lawsuit?

A Yes.
Q When you first received the cease and desist letter from Ice Miller, there was some followup between counsel requesting a copy of the contract.
Your testimony is, you didn't review a copy of Australian Gold's distributorship contract even back in 2004?
A I had my attorneys review it for me.
Q Without telling me what they did, but you had them explain to you what they thought the contract meant?
A It was 2 years ago, probably.
Q Is it your understanding that Australian Gold does not permit its distributors to sell to businesses that are not tanning salons?
A Say that one more time, please.
Q Are you aware that Australian Gold does not permit its distributors to sell to businesses that aren't tanning salons?
A I don't believe that to be true.
Q Why not?
A They sell pretty much, their distributors are allowed to sell to anybody with

a tanning bed, aren't they? Hair salons, gyms. If a gymnasium 20,000 square feet, how big would a tanning room be? Well, it would be five tanning rooms in there with 1,000 square feet.
So is it a gym or a tanning salon? You tell me. Well, a gym with tanning beds in it. A distributor would be allowed to sell to that.
Q Look at paragraph 1.1(d). It says, customers of distributor. Distributor shall market or distribute products only to customers.
And if you look at the next subparagraph, it says, for all purposes in this agreement, quote, customer, end quote, means only a person, A, whose primary business activity is operating a tanning salon or hair and beauty care salon, B, who offers approved indoor tanning and instruction on the use of the products as an on-premises service, and C, who obtains training and instruction on matters related to the use of the products from Australian Gold or one of Australian Gold's distributors.
A I do see that.
Q Do you believe that your suppliers from whom you bought the products, Yuca Tan and Danny

Sheehan, John Tufarella and Dominic Bartone, all meet that criteria?
A Yes.
MR. COLEMAN: Object to the form of the question.
Q Were you aware that Australian Gold has a provision in the contract that says that a customer would not be any person who sells to other resellers or buys on behalf of any other resellers?
MR. COLEMAN: Object to the form of the question. If you want to put a date on it, my objection will evaporate. You said, were you aware. You mean, is he aware?
Q As you sit here today, are you aware that Australian Gold does not consider a customer for purposes of its contract any person who sells to other resellers or buys on behalf of other resellers?
A I'm not aware of it until now.
Q Would you agree with me that Danny Sheehan and his tanning salon buy on your behalf?
MR. COLEMAN: Object to the form. He's not an attorney.

Q You can answer.
A I place orders with Danny. He gets the stuff. That's what he does.
Q Is that also what Mr. Tufarella and Mr. Bartone do for you, as well?
A Yes, they do that for me, as well. As do most of the retailers in this country.
Q Other than the conversations that you've described for me in this deposition, have you had any other communications with Australian Gold?
A Not that I'm -- no. No.
MR. MATTHEWS: Let's take a quick break.
(A recess was taken.)
Q What happens if you and Mr. Mercadante disagree over a business decision, how is it resolved?
A It's never happened.
Q What are your plans if that happens?
A Talk it out.
Q What if Mr. Mercadante says, well, no disrespect, Mr. Sagarin, but you ain't an owner of this company and you're not an officer, it's not your decision, I'm going to make it?
A Then we need to call Ron for another

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reason.
Q Are decisions supposed to be made jointly, is that the intention?
A That's the intention.
Q What role does your wife have on making decisions, business decisions, such as products you're going to carry, different avenues you might pursue in your business, such as the Everlast deal that you testified to, what role does she have?
A None.
Q And you and Mr. Mercadante never had a disagreement concerning the sale of tanning lotion?
A No.
Q Was a decision to file lawsuits against Australian Gold and Designer Skin made jointly between the two of you?
A Probably more me.
Q And he just went along with your decision?
A Correct.
Q I believe you told me earlier that Laura Fanning hasn't taken any money out of the

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corporation?
A That's correct.
Q So the $15,000 she has invested, she's received zero return on that investment?
A That's correct.
Q And you've received a car, correct?
A I receive a car, payment for the car.
Q Why are you working for free, essentially?
A To build -- sweat equity. I don't work for free. I work for $48,000 a year.
Q That's paid by Helen Sagarin, right?
A Correct.
Q What do you do for Helen Sagarin for $48,000 a year?
A Not much.
Q Why is she paying you?
A Because I'm her son.
Q You get paid for being her son?
A Yes.
Q Not working?
A Not much. Not much there. Stock the shelves, fill in.
Q Mom, just pay me?

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A Pretty much.
Q Why don't you have her pay you more and you can quit S&L Vitamins, too?
A Because there's not enough to go around.
Q But seriously, you spent 6 years in this business, S&L Vitamins and you've invested $15,000, and you've seen zero out of it?
A Correct.
Q What's Helen Sagarin get in return for paying you $48,000?
A In case she's sick, I get to fill in for her, not much.
Q Do you know how much she takes out of her company, are you making more than she does?
A I have no idea what she makes.
Q When is the last date you worked for Helen Sagarin's company?
A I fill in all the time over there.
Q Has S&L Vitamins reported all its income on its tax returns?
A It should.
Q Is the same true for you individually?
A Correct.
Q What do you do with your time in the off

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season when you're outside of S&L Vitamins?
A Fish, box, run, play with my kids.
MR. MATTHEWS: I have nothing further.
(Time noted: 2:15 p.m.)

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ACKNOWLEDGEMENT

STATE OF NEW YORK)
COUNTY OF NEW YORK)

I, LARRY SAGARIN, hereby certify, I have read the transcript of my testimony taken under oath in my deposition of March 30, 2006; that the transcript is a true, complete and correct record of what was asked, answered and said during this deposition, and that the answers on the record as given by me are true and correct.

____
LARRY SAGARIN

Subscribed and sworn to before me
this _____ day of ____________________, 2006.

____
NOTARY PUBLIC

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CERTIFICATE

STATE OF NEW YORK)
COUNTY OF NEW YORK)

I, MICHELE ROSSI, a Registered Professional Reporter and Notary Public within and for the State of New York, do hereby certify:

That, LARRY SAGARIN, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

In witness, whereof, I have hereunto set my hand this 21st day of April, 2006.

____
MICHELE ROSSI, R.P.R.

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